



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket No. 2015-0010]

RIN 0750-AI45

Defense Federal Acquisition Regulation Supplement: Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States (DFARS Case 2014-D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide updates and clarifications regarding requirements for contractor personnel supporting U.S. Armed Forces deployed outside the United States.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Julie Hammond, Telephone 571-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 80 FR 4850 on January 29, 2015, to update the DFARS clause at 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States. No public comments were submitted in response to the proposed rule.

II. Discussion and Analysis

No changes are made to the substance of the final rule. Subsequent to the publication of the proposed rule, however, DFARS subpart 225.74 was redesignated as DFARS 225.3 (see 80 FR 36900 published on June 26, 2015) to align with the coverage in the Federal Acquisition Regulation subpart 25.3. This final rule is updated accordingly to reflect these baseline changes.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section

6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

The rule is needed make the following updates to the clause at the Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7040, Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States—

- Remove “humanitarian assistance operations” from the list of applicable operations covered by the clause because it is a subset of “peace operations”;
- Clarify that both contractors authorized to accompany the Force (CAAF) and non-CAAF personnel must be made aware of information related to sexual assault offenses;
- Clarify that the section on reporting alleged crimes does not create any rights or privileges that are not authorized by law or DoD policy;
- Update the reference for special area, country, and theater clearance requirements for deploying personnel;
- Update the form used to show vaccinations are current;

- Update the SPOT web address; and,
- Add the title of DoD Instruction 3020.41.

No comments were received from the public in response to the initial regulatory flexibility analysis.

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The rule updates DFARS clause 252.225-7040, which is required for use in contracts that authorize contractor personnel to support U.S. Armed Forces deployed outside the United States in: (1) contingency operations; (2) peace operations consistent with Joint Publication 3-07.3; or (3) other military operations or military exercises, when designated by the combatant commander or as directed by the Secretary of Defense.

According to the Federal Procurement Data System (FPDS), DoD awarded 506 contracts in fiscal year 2013 requiring performance overseas in support of contingency, humanitarian or peace operations. Of the 506 contracts, only 76 contracts (15%) were awarded to small businesses. At this time, there is no way of estimating how many contracts may be awarded requiring performance outside the United States in support of other military operations or exercises, when designated by the

Combatant Commander. However, the number of small businesses awarded such contracts is expected to be minimal.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements. DoD did not identify any alternatives that could meet the objectives of the rule.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0460, entitled Synchronized Predeployment and Operational Tracker (SPOT) System.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

252.371-5 [Amended]

2. Amend section 225.371-5 by removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.225-7040 by—

a. Removing the clause date “(JUN 2015)” and adding “(AUG 2015)” in its place;

b. Removing paragraph (b)(1)(ii) and redesignating paragraphs (b)(1)(iii) and (iv) as paragraphs (b)(1)(ii) and (iii), respectively;

c. In paragraph (d)(3) introductory text, removing “CAAF are aware” and adding “CAAF and non-CAAF are aware” in its place;

d. In paragraph (d)(3)(i), removing “DoDD 6495.01” and adding “DoD Directive 6495.01” in its place;

e. Adding paragraph (d)(5)(iii);

f. Revising paragraph (e)(1)(ii)(C) (3);

g. In paragraph (e)(1)(iv), removing “DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide” and adding “DoD Directive 4500.54E, DoD Foreign Clearance Program” in its place;

h. In paragraph (g) (2), removing

"https://spot.altess.army.mil/privacy.aspx" and adding

"https://spot.dmdc.mil" in its place;

i. In paragraph (j) (1), removing "DoD Instruction 3020.41" and adding "DoD Instruction 3020.41, Operational Contractor Support" in its place;

j. In paragraph (j) (2), removing "will-notify" and adding "will notify" in its place; and

k. Removing paragraph (q) (2) and redesignating paragraphs (q) (3) and (4) as paragraphs (q) (2) and (3), respectively.

The addition and revision read as follows:

252.225-7040 Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States.

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(d) * * *

(5) * * *

(iii) That this section does not create any rights or privileges that are not authorized by law or DoD policy.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(C) * * *

(3) All CAAF and selected non-CAAF, as specified

in the statement of work, shall bring to the designated operational area a copy of the U.S. Centers for Disease Control and Prevention (CDC) Form 731, International Certificate of Vaccination or Prophylaxis as Approved by the World Health Organization, (also known as "shot record" or "Yellow Card") that shows vaccinations are current.

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